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STATE FOR EEB/IPC, IO/GS, OES/ENRC
COMMERCE FOR USPTO

E.O. 12958: N/A

TAGS: [ECON](#) [KIPR](#) [WIPO](#)

SUBJECT: WIPO on Genetic Resources, Traditional Knowledge and
Folklore, December 7-11, 2009

¶1. SUMMARY: The 15th session of the World Intellectual Property Organization's Intergovernmental Committee (IGC) on Intellectual Property and Genetic Resources, Traditional Knowledge and Folklore (GRTKF) had successful discussions on substantive issues, but delegations remained far apart on procedural issues related to intersessional meetings intended to speed the IGC's work. With no agreement on the terms of reference for the intersessional working group (IWG), the IWG will not meet in March 2010 as planned, and the full IGC committee will meet in March instead to try to agree on process. END SUMMARY.

¶2. The Fifteenth Session of the IGC was held from December 7 to December 11, 2009. In addition to the participation of Member States, over 200 NGOs are accredited to the IGC, many representing indigenous and local communities. U.S. delegation members were Karin Ferriter, Attorney Advisor, Office of Intellectual Property Policy and Enforcement, US Patent and Trademark Office (USPTO) (co-head of delegation); Susan Anthony, Attorney Advisor USPTO (co-head of delegation); Peggy Bulger, Director of American Folklife Center Library of Congress; Sezaneh Seymour, Foreign Affairs Officer, State Department; Nancy Weiss, Nancy E. Weiss, General Counsel, U.S. Institute of Museum and Library Services, and Deborah Lashley-Johnson, IP Attache for Economic and Science Affairs, U.S. Mission, Geneva.

IGC Resumes Substantive Work

¶2. Under a new mandate agreed to at the September 2009 WIPO General Assemblies, the IGC is to move to "text-based negotiations" to ensure the effective protection of TK, GRs and TCEs with the objective of developing an international legal instrument (or instruments) to be submitted to the WIPO General Assembly in September 2011.

¶3. With this new mandate and after several years of stalemate concerning what type of legal form of GRTKF protection should the IGC pursue, the IGC's substantive work resumed at the 15th session. Delegations proposed initial modifications to a number of key, earlier documents, including working documents for the protection of TCEs and TK. Unlike with TCEs and TK, GR did not have a draft text upon which the Committee could focus its work. Instead, the document discussed referenced listed options for further work. Although some delegations expressed a preference to discuss a second cluster of options, which is related to the disclosure requirement, there was general support for continuing work on each of the three clusters identified in the document.

¶4. In particular, Member States posed questions and answers on issues such as what constitutes a traditional cultural expression and what type of protection against the misappropriation of TK should be given. Before the next IGC meeting, the Secretariat will prepare new revised working documents on TCEs and TK reflecting the proposed modifications and comments to the earlier documents. The documents will be available by January for Member State comment. As for GR, the Chair also provided an opportunity to the submission of written comments, with a deadline of mid-February, 2010.

¶15. Nonetheless, delegations appeared to have different interpretations on the status of the revised working documents on TCEs and TK. Many developing countries viewed the working documents as the only basis for the negotiations to achieve an internationally legally binding treaty immediately. However, Members of the Group B developed countries view the working documents as one of many documents the IGC should use in developing a legal instrument. Moreover, Group B noted that while the new mandate of the IGC refers to three specific documents concerning TCEs, TK, and GR, the mandate also notes that all the Committee's other documents, should "constitute the basis of the Committee's work on text-based negotiations".

Procedural Questions Remain

¶16. Under the new mandate, a full program of IGC meetings and intersessional work between now and September 2011 is stipulated. IGC 15 was supposed to develop terms of reference for the intersessionals, however, agreement failed to be reached on who will attend the IWG, what its mandate will be (negotiating group or technical group), and what order will the issues be discussed. An African Group proposal from early 2009 calls for a limited group of technical experts (27 experts) to speed up the mandated work of the IGC. Though the proposal is unclear, based on numerous interventions, the proponents of the proposal think the mandate of the IWG is to negotiate the drafting of the legal text. In contrast, Group B was generally willing to not oppose a limited group if the mandate was of a technical nature where questions are posed at the IGC and are then referred to the IWG. However, Group B could not support a limited expert group with negotiating authority, because that would eliminate the role of Member States.

¶17. Regarding the issue concerning the way the IWG discussions will be organized, the African proposal suggested focusing each of the three scheduled intersessional meetings on one of the three IGC issues, beginning with TCEs in February or March 2010, TK at the October 2010 intersessional, and discussion on GR at the intersessional planned for February or March 2011. The U.S. and other developed countries are concerned that the proposed timeline for GR (2011) would fail to effectively influence negotiations at the UN Convention on Biological Diversity (CBD), where negotiations on an international regime on access and benefit-sharing for genetic resources (which will include details on handling IP) are moving quickly, with a deadline for completion in July 2010. While developing countries seek to have the outcomes at the CBD influence the IGC's work, the U.S. and other Group B countries view issues concerning IP to be under WIPO's mandate and therefore should be discussed at the IGC first.

¶18. To formalize concerns, Group B tabled a proposal outlining its views on the IWG. While a Chair's text was released to bridge gaps, positions remain unchanged. The next IGC now scheduled for March 2010 in place of the IWG will focus on this issue, and may also address who will chair future IGCs and IWGs.

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